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# Politics and Power in the European Convention

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The Convention on the future of the European Union has been heralded by many as a unique political setting. So far the process of EU Treaty change was subject to the collision of national political interests in Intergovernmental Conferences. By contrast, the Convention appears to promise a fundamentally open and normatively informed arena. This article probes the validity of this promise by dissecting the political dynamics of the Convention along three dimensions: political behaviour and alliance formation; agenda management; and the norms informing its proceedings.

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## I: Introduction

The Convention on the future of the European Union was established by the European Council of Laeken in December 2001 and started its work two months later. On 20 June 2003, the president of the Convention, Valéry Giscard d'Estaing, former president of France, delivered the main conclusions of the Convention to the European Council: a Treaty establishing a Constitution of Europe to replace the existing treaties of the European Communities and the European Union. The European Council (2003) has welcomed the work of the Convention as 'a good basis for starting in the Intergovernmental Conference', which is the political forum that eventually has to decide on Treaty changes.

Observers have suggested that the Convention may represent a qualitative change in the European Treaty revision process (Hoffman, 2002). Whereas the Intergovernmental Conferences (IGCs) are subject to diplomatic negotiations behind closed doors, the Convention is considered to have brought the revision process into the open. Parallel to this argument, it is claimed that, while interactions during the IGC are best conceived as hard bargaining between the different national interests, the Convention has facilitated a spirit of deliberation in which actors joined together in the pursuit of shared understandings (Closa, 2003; Magnette, 2002).

In this article, an attempt is made to chart the political dynamics within the Convention. Analyses of earlier Treaty revision processes have been dominated by the dichotomy of intergovernmental bargaining versus supranational reasoning (see Moravcsik, 1998 among others). One may wonder, however, whether these categories are still appropriate when it comes to analysing the peculiar institution of the Convention. Instead, this article is informed by classical theories of political behaviour, agenda management and power (Kingdon, 1995; Lukes, 1974). After a short section on the basic set-up of the Convention by the European Council, the

analysis first turns to the political behaviour of the actors in the Convention arena and the alliances that were formed. Section 3 then examines the procedural organisation of the Convention and the way in which its agenda was managed. Finally, section 4 seeks to reconstruct the norms that developed in the process of the Convention.

## **II: The set-up of the Convention**

In the Declaration of Laeken the European Council asserted that 'The Union needs to become more democratic, more transparent and more efficient' (European Council, 2001). It established the European Convention with the task 'to pave the way for the next Intergovernmental Conference' and 'to consider the key issues arising for the Union's future development and try to identify the various possible responses'. The European Council appointed Valéry Giscard d'Estaing (former president of France) as the chairman of the Convention, and Giuliano Amato (former prime minister of Italy) and Jean-Luc Dehaene (former prime minister of Belgium) as vice-chairmen.

The European Council determined the composition of the Convention by defining the number of representatives of its various components. In doing so it drew on the example of the earlier Convention that in 2000 had drafted the EU Charter of Fundamental Rights and which had involved representatives of national governments together with national and European parliamentarians and a European Commissioner. In the new Convention all Member States were guaranteed three members, one chosen by the head of state or government and two representing the national parliaments. One notable innovation was that also all 13 accession candidate countries were invited to send a similar representation to the European Convention. Of the European institutions the European Commission was invited to send two representatives to the Convention. The European Parliament was given 16 seats. Moreover, apart from the chairs, each member of the Convention could be replaced by an alternate. Thus total membership of the Convention came to 105 full members and 102 alternates.

The European Council also provided for a praesidium that, as a kind of steering group, was to 'lend impetus and [to] provide the Convention with an initial working basis' (European Council, 2001). The praesidium was made up of the three chairmen and two representatives of all institutional groups, except for the government representatives who were represented by the three states that were to hold the EU presidency over the period of the Convention's deliberations (Spain, Denmark and Greece). At the request of the candidate countries, a representative from those countries (the Slovene parliamentarian Alojz Peterle) was later added as an invitee to the praesidium.

## **III: Political behaviour and alliances**

Whereas the European Council determined the composition of the Convention in terms of institutional background, it did not stipulate anything concerning the composition of the delegations of the European institutions, either in terms of political affiliation or of nationality (cf. Closa, 2003, s. 2; Shaw, 2003, 57 ff.). As it turned

out, five Member States and the accession countries saw their presence in the Convention limited to three full members. On the other hand, France was represented by seven full members and the other three big Member States (Germany, the United Kingdom and Italy) by six.

Looking at political affiliations, the two dominant political movements in Europe, the Christian Democrats and the Social Democrats, also dominated the Convention. Each of them accounted for more than a third of the full members from the present EU Member States. With seven full members, the Liberal Democrats turned out to be the biggest of the smaller party groups. With four full members, the Union for Europe of the Nations Group (UEN) was also rather well represented in comparison with its share in the European Parliament. On the other hand, the Greens and the United Left (GUE/NGL) got a relatively poor deal.

The presence of alternate members helped however to secure a greater diversity of political affiliations in the Convention. Indeed, as it soon turned out, alternates often contributed actively to the proceedings. Participation of the alternates of the representatives of the governments and of the Commission was generally premised on the absence of the full members. However, on the parliamentary sides many alternates engaged as much in the debate as their full members. This was of particular importance in the case of national parliamentarians, where in the majority of Member States the full memberships were shared between the Social Democrats and the Christian Conservatives. In turn the presence of parties like the Greens, the GUE/NGL and the UEN relied much on the alternate delegates.

Since each member of the Convention had a triple allegiance – institutional background, nationality and party affiliation – the Convention did not automatically split up along clear political lines; individual members could in principle choose how to align themselves depending on the issue. In practice, Convention members joined in alliances to submit contributions and, in the final stage of the Convention, to draft amendments to the proposed articles of the Constitutional Treaty. An analysis of the coalitions reveals a number of interesting patterns.<sup>1</sup> Notably, the political behaviour of government representatives followed fundamentally different patterns from that of the (national and European) parliamentarians in the Convention.

Government representatives engaged little or not at all with their party-political groups. Typically, government representatives submitted most of their contributions on their own or only co-signed by their alternate. Some government representatives would co-ordinate their actions with the parliamentarians of their own nationality, in some cases limited to those that were part of the government coalition.

The most powerful coalitions were, however, the ones in which government representatives joined forces. In the course of the Convention, clear patterns emerged distinguishing the more integrationist from the more intergovernmentalist governments. There was also a clear difference in the way these patterns evolved between the big and the smaller Member States.

From the start of the Convention there were clear differences between the priorities of the big Member States, with Germany leaning more to the federal end of

the spectrum, the UK tending to a more intergovernmental approach and France taking a somewhat mixed position in the middle (Crum, 2003). A clear split emerged, however, when in autumn 2003 the French and German governments used the occasion of the 40<sup>th</sup> anniversary of the Elysée Treaty to engage in a close collaboration. Together they published four joint papers on Convention topics culminating with a joint paper on institutional affairs (CONV488/03).<sup>2</sup> The split was deepened as this much-criticised paper coincided with the two governments taking issue, in the name of Europe, with the US approach to Iraq. Soon enough the Franco-German coalition confronted a British-Hispanic coalition (CONV591/03) that later expanded to include the Poles and seven smaller (Member and Accession) States (CONV766/03).

While the big Member States became entangled in their political disagreements, the smaller Member States were actively forging coalitions to make their own mark. Initially the Benelux states, pushing rather integrationist positions, played a leading role. Following upon their initiatives, 18 smaller states united behind Luxembourg prime minister Jean-Claude Juncker who acted as their spokesman at the April 2003 meeting of the European Council with the Convention president. This coalition included all the smaller states except for the most intergovernmentalist ones, Denmark and Sweden. By the end of the Convention the point of gravity among the smaller states tilted away from the Benelux position, as the small states in the middle of the spectrum (Finland, Portugal and Austria) defined a joint position with the more intergovernmentalist ones and the Accession States (except for big Poland and integrationist Romania) (CONV646/03).

Contrary to the government representatives, parliamentarians (of both European and national level) in the Convention heavily relied on party-political groups (cf. Fumerio, 2003, ch. 3). Members of the European Parliament (EP) generally took the lead. Most notably the caucus of the European Christian Democrats chaired by German MEP Elmar Brok operated in many cases en bloc. Drawing not only upon the 12-piece Christian Democratic delegation but also upon national parliamentarians from both Member States and Accession States, Brok regularly succeeded in summoning more than 30 like-minded conventioners for his amendments.

The Social Democratic caucus was considerably less organised. One reason for this was the fact that the Social Democratic delegation had elected Convention vice-chairman Giuliano Amato as its chair. Amato's position restrained him from mobilising political movements in the Convention. More often than not, the Social Democratic MEPs acted in ad hoc sub-coalitions of two or three members only. The engagement with national parliamentarians of Social Democratic persuasion also took place in a more ad hoc manner. While some became closely associated with the Social Democratic EP delegation, others preferred to operate outside of the party-group framework.

All other political groups had only one full member in the EP delegation. Of these the Liberal Democrats best succeeded in mobilising themselves as a group under the thoughtful and experienced guidance of British MEP Andrew Duff. The Green delegation was much less visible as a group. Markedly, its most prominent member, German foreign minister Joschka Fischer, did not become engaged in party-political contributions. Austrian MEP Johannes Vogenhuber and the various

Green parliamentarians from the national level rallied together on a number of issues, most notably involving the environment, services of the general interest and the future of the Euratom Treaty. On some occasions the Greens also forged coalitions with the regionalists of the European free alliance with whom they form an integrated political group in the European Parliament. The various members of political parties associated with the UEN and the GUE/NGL operated mostly on their own.

Possibly the most conspicuous example of political mobilisation could be found at the Convention fringes where an ad hoc coalition emerged of left-leaning MEPs, extreme right Danish parliamentarians, British Conservatives and some opposition members from the Accession States. From the very start of the Convention, these eurosceptic members co-operated on a number of contributions and eventually their co-operation led to the drafting of the alternative report (CONV773/03, also included in CONV851/03).

#### **IV: Agenda management by the Convention praesidium**

Political manoeuvring and coalescing explain only some of the results achieved by the Convention. The majority of alliances in the Convention were formed in response to the proposals put before it. Looking back at the end of the Convention, Giscard d'Estaing (2003) commented: 'If you allow me, I would like to reveal to you one of the recipes of our success, namely the good use of time'. Indeed from the very beginning of the Convention, Giscard d'Estaing had taken control over its timing and the agenda. In this effort, a crucial role was played by the three phases he had proposed for the Convention's work: a listening phase, a study phase and a recommendation phase (Giscard d'Estaing, 2002, 8 ff.). The distinction between these phases provided Giscard d'Estaing with an argument to allow issues to appear on the Convention's agenda only in due course.

Agenda management was much needed since, given the wide-ranging character of the Declaration of Laeken, a whole lot of interests and views struggled for access to the Convention's agenda. This process was reinforced by the civil society forum that the Laeken European Council had set up as well. However, the strongest external pressures came from the national capitals where, ever since Joschka Fischer's speech at the Humboldt University in Berlin, national political leaders had been shaping their views on the future of the European Union (Crum, 2003). Most notable was the proposal to replace the rotating EU presidency by a permanent Chair of the European Council, which was vigorously advocated by the British and French governments.

In any case, the Convention agenda was well protected against the random influx of proposals. All agendas of the plenary sessions and all proposals to be submitted were first discussed by the Convention praesidium. And as much as the praesidium guarded the gates of the plenary, Giscard d'Estaing guarded the gates of the praesidium. Working in close tandem with the secretariat's head, former British diplomat Sir John Kerr, Giscard d'Estaing controlled the working methods of the praesidium (CONV9/02, Art. 6.8) and its agenda. Giscard d'Estaing's control was reinforced by the strict confidentiality of the praesidium and the loyalty instilled

in its members. Typically, it was already decided early on that 'in order not to undermine the role of the praesidium, its members rather than circulating individual contributions, would submit suggestions to the praesidium' (Summary of praesidium meeting, 15 April 2002, p. 1).

Carlos Closa's nice characterisation of the Convention's process as a 'to and fro procedure' goes to underline the importance of the substance and timing of the proposals submitted to the plenary: 'Debate starts with an issue from a paper submitted by the praesidium, stock is taken of opinions and summarised and, again debate starts from this new point' (Closa, 2003, p. 18). In the listening phase of the Convention work, which lasted from February until July 2002, working documents drafted by the Convention secretariat provided the basis for the debates. From summer 2002 onwards, work in the study phase was dominated by the working groups, the last of which submitted its report for plenary debate in February 2003. Although the working groups allowed for more open and smaller-scale discussions than the plenary, here also the praesidium members guaranteed structure and focus by acting as chairs and ensuring that the working group would remain loyal to the mandate that the praesidium had defined for it. As working group chairs, the praesidium members were also responsible for the drafting of the working group reports.

Throughout the Convention there were several attempts from the floor to get a grip on the agenda. The most important examples were the early requests for the establishment of working groups, the pressure on the praesidium to come forward with a first draft of the end-product (CONV 181/02) and the request for a Working Group on Social Europe (CONV 300/02). Giscard d'Estaing would resist giving the initiative away. In a first response the chair would avoid a direct confrontation with the requests and refer them to the praesidium. The deferring of a response sufficed in some cases to render it obsolete. This strategy failing, the chair would seize the initiative by forging the request to its own preferences. Thus the request for working groups was met eventually by a proposal by the praesidium for a first round of Working Groups on 10 particular issues.

The praesidium approached each new phase of the Convention with great caution. One crucial turning point for the Convention came in late October 2002, when Giscard d'Estaing unveiled the 'skeleton' of the draft Constitutional Treaty (CONV369/02), which basically provided a table of contents wherein each topic was assigned its place. The next turning point was the presentation of the first draft articles on competences (arts. 7–15, eventually arts. 11–17). Here, both the anxieties and the political differences within the praesidium came to the fore when the initial presentation in the praesidium met with fundamental objections, especially from the side of the Commission representatives. Eventually, it took four praesidium meetings to reach an agreement, forcing Giscard d'Estaing to postpone their presentation to the plenary for one session.

Still, from that moment onwards, the draft articles came out in a steady stream, engaging the Convention members in an intense and tightly paced working process. Convention meetings were convened every three weeks or so and while one batch was discussed a new batch would already be presented. Relying on the transmission speed allowed by the Internet, draft texts would be made available as



soon as possible to all Convention members. They were then invited to draft amendments. Amendments were processed by the Convention secretariat that posted them on the Internet, accompanied by a memo that bundled them in logical order and provided a summary of the main threads encountered.

Overall, no less than 5995 amendments were tabled to the praesidium draft articles. Notably, however, few attempts were made to raise fundamental challenges to the very way the draft Constitutional Treaty was set up and the choices that were made in addressing certain issues and omitting others. Instead amendments generally took the draft texts as their point of departure, commenting upon them and calling for some passages to be deleted and other things to be added. Part of this may be explained by the quality of the texts proposed, but it must also be partly accounted for by the (time) constraints that were imposed upon the Convention members.

Throughout the drafting process the praesidium made sure that it retained the initiative on the drafting and the revision of the articles. Instead of immediately following up on each plenary debate, a fully revised set of articles of Part I was presented only after all had been discussed (CONV724/03), so that the draft Constitutional Treaty could also be appraised as a whole.

On the particularly sensitive issue of the future institutional organisation, Giscard d'Estaing personally controlled the drafting of the articles. Their eventual release, late April 2003, deviated markedly from the strict routines thus far. The day before they were due to be presented in the praesidium, the draft articles on institutions reached the French newspaper *Le Monde*. The press coverage provoked a strong reaction among the Convention members and a particularly sharp critique of the Commission. The next day in the praesidium, Giscard d'Estaing was forced to amend his original proposals on some key points. Obviously there was no possibility to have them thoroughly revised as they were also keenly awaited by the plenary of the following day. Indeed, with the Convention's deadline approaching in less than two months, a further postponement of these draft articles would have put the Convention in a really difficult situation.

## **V: The normative self-understanding of the Convention**

At the deepest level, political behaviour within the Convention was conditioned by the norms under which it operated. Given the unique character of the Convention, these norms were far from determined at the start. Yet in key aspects, the very positioning of the Convention by the Laeken Declaration already conditioned the normative self-understanding of the Convention by defining its mission to 'pave the way for the next Intergovernmental Conference as broadly and openly as possible ... it will be the task of that Convention to consider the key issues arising for the Union's future development and try to identify the various possible responses' (European Council, 2001).

From the very start of the Convention, many of its members (parliamentarians above all) aspired to transcend the shadow of the IGC. This aspiration was picked up by Giscard d'Estaing who, while noting that the Laeken Declaration left the Convention the choice between submitting either a single text or various options,



imprinted it upon the Convention that ‘our recommendation would carry considerable weight and authority *if we could manage to achieve broad consensus on a single proposal which we could all present*. If we were to reach consensus on this point, we would thus open the way towards a Constitution for Europe’ (Giscard d’Estaing, 2002, p. 11, original emphasis). Thus Giscard d’Estaing underlined from the very start two fundamental norms of the Convention: the commitment to establishing a consensus and the orientation towards a single text of a constitutional character.

Pursuing this line of argument, Giscard d’Estaing translated this understanding into a particular Convention ethos: ‘this Convention cannot succeed if it is only a place for expressing divergent opinions. It needs to become the melting pot in which, month by month, a common approach is worked out ... in order to think about what proposals we can make, the members of the Convention will have to turn towards each other and gradually foster a *Convention spirit*’ (Giscard d’Estaing, 2002, p. 13, original emphasis).

For one thing, the ‘Convention spirit’ left little space for voting as a decision-making procedure in the Convention. Recognising the fundamental qualitative differences between the interests represented, it would be inappropriate to assign equal votes to the representatives of, for instance, the German government, the Maltese parliament and the European Commission. At the same time, any attempt to assign weights to the different votes was bound to remain open to challenge. In any case a simple majority would not do, as the Convention was aiming to reach its conclusions by a consensus. For these reasons, Giscard d’Estaing determined from the very start that there would be no voting in the Convention. Instead the Convention would work towards a common proposal until the moment at which the president would declare a consensus to have been reached.

While fundamental cleavages were thus discouraged from revealing themselves in the Convention, much was done to reaffirm the joint ‘Convention spirit’. One way in which the Convention spirit found expression was through what Paul Magnette has called the ‘de-legitimisation of “situated interests”’: ‘although they undeniably defend “particular interests”, the members usually present their arguments as impartial views, abstract reasoning seeking to define the “common good”’ (Magnette, 2002). A second major characteristic of the Convention spirit, also identified by Magnette (2003), is the preference for technical legal arguments (arguments of legal simplification in particular) over arguments of power (threats) and over arguments of ideological principles. Whereas arguments of the latter kinds might have emphasised division lines, the legal approach provided a neutral common ground and allowed for a mode of de-politicised argument.

The focus on constitutional issues contributed to the Convention’s sense of unity and the strengthening of its members’ autonomy *vis-à-vis* their constituencies. The impact of the Convention’s norms differed, however, for its various components. Among the governments, some (e.g. Finland, the Netherlands) had initially sought to underline the preparatory character of the Convention, insisting that the real decisions could only be taken at the IGC. However, no government representative could turn the tide of the Convention and, like UK Minister for Europe Peter Hain, they soon realised that active engagement – rather than non-committal – was the best way to make a mark.

Although the forced engagement of the government representatives may be considered a success for the parliamentary majority in the Convention, they also had to pay a price. The Convention spirit suppressed the representation of party-ideological and national interests. What is more, the Convention also revealed that political ideologies do not necessarily define a consistent party line on the constitutional future of the EU. Notably it was the Christian Democrats and the Liberal Democrats who found themselves most at home in the context of the Convention. The Social Democrats had a much harder time in accommodating themselves to the Convention spirit. The smaller political groups further left along the political spectrum (the Greens and the United Left) had even more difficulties in distinguishing themselves, especially as they were split between constructive radicals and eurosceptics on principle. At the fringes of the Convention, members could be found who were unwilling to yield to the self-understanding of the Convention mainstream. Eventually eight of them submitted an alternative report (initially called 'minority report') to the European Council (CONV851/03, pp. 21–24).

After the Convention spirit was fostered to develop in the listening phase, it operated in full swing in the study phase with the work being done in the working groups. As the Convention moved towards its recommendations, several factors indicated for many the end of the Convention spirit and the beginning of a proto-IGC, dominated by national interests and hard bargaining. Most visible was the appearance in November 2002 of the French and German foreign ministers, Dominique de Villepin and Joschka Fischer, in the Convention. Although their membership was initially welcomed, many Convention members felt offended when the ministers only turned up at the Convention meetings to present their views and did not really engage with the debates. Nevertheless, regardless of the entrance of de Villepin and Fischer, it was unlikely that the spirit of the study phase could be preserved when it came to the actual drafting of recommendations, particularly since the most contentious debate, the one on institutions, had deliberately been kept off the agenda of the study phase.

Still, even if negotiations toughened up, the praesidium managed to avoid major political clashes and it held to its commitment to avoid voting. To succeed in this, the praesidium (strongly supported by the secretariat) made an enormous effort to consider the thousands of amendments tabled by the Convention members on its draft articles. When the consolidated revised version of Part I of the draft Constitutional Treaty was published as a whole by the end of May 2003 (CONV724/03), extensive reasoning was provided for the choices made. Throughout the process the praesidium showed itself quite willing to revise its texts. On more radical proposals, however, it often found that there were strong voices 'for' and 'against', allowing it to stick to its original proposals as rather well-balanced compromises. Also the praesidium generally waited to abandon an earlier proposal until the moment where it was certain that a stable alternative could be established. Thus, the praesidium avoided engaging itself in a continuous revision process.

In the final phase, the government and parliamentary representatives adopted strikingly different strategies. Government representatives pursued a limited strategy and focused their attention on specific issues, mostly involving policies (rather than institutions) that they considered to be of particular national interest.

Notably, at this point some of them unashamedly flagged issues on which they insisted their nation could never compromise. On the other hand, the parliamentarians closed ranks, realising that as the Convention was about to deliver its work to the IGC, it was crucial to maintain a united front. Each of the two parliamentary components (national and European) sought to define a limited number of outstanding priorities that were then co-ordinated between the two groups and issued as joint memos.

Nevertheless, the main Convention achievements had already been secured. The only task remaining for the praesidium was to keep everyone on board. It was committed to hold on to the compromises reached and only yielded on a limited number of issues. The representatives of the bigger Member States got some specific but important concessions on certain competences. The wishes of the parliamentarians were long resisted but were eventually met to some degree. Thus, the praesidium succeeded in accommodating the many different views of the Convention, paving the way for Giscard d'Estaing who declared the consensus on the draft Constitutional Treaty on 13 June 2003.

## VI: Conclusion

This article has not attempted to make a complete analysis of the politics of the Convention. Instead, it has sought to demonstrate that a proper understanding of the proceedings of the Convention requires an appreciation of the various dimensions of the politics at work: political behaviour, agenda management and normative structuring. Most striking perhaps is that the Convention's self-understanding pushed conventional party-ideological cleavages to the background and even suppressed national differences over the ultimate telos of the European Union. That is not to say that political differences did not matter. The efficacy of the Convention's norms and its agenda-management process was very much predicated on the careful handling of the political cleavages present in the Convention.

One may say that the Convention has managed to convert antagonistic power relations (power over) in a joint capacity to act (power to).<sup>3</sup> In more contemporary language, one would say that the Convention has replaced the logic of bargaining with that of deliberation and has thus been able to avoid the deadlocks in which earlier IGCs had been caught. Indeed, as the final section demonstrated, the very contrast with the IGC has had a strong influence upon the work of the Convention and its capacity to forge a consensus.

Typically, at the final Convention meeting, president Giscard d'Estaing (2003) symbolically thanked the half-turtle-half-dragon porcelain statue, nicknamed 'Wukei', that he had used as a mascot along the way, saying, 'And I expect, as many of you probably believe, that, since the beginning, she knew where she wanted to go!' Yet a too-deterministic and too-celebratory view of the Convention should be avoided. The Convention has made fundamental decisions where alternatives were available and might have been justified as well. While the draft Constitutional Treaty may eventually serve many interests, it is bound to disadvantage others, particularly those strongly attached to national, rather than European, interests. From that perspective, the Convention method only marginally improves

upon the IGC by casting the political dynamics in a different format. Whatever its merits, the normative reading of the Convention should not be inflated to conceal the underlying differences in political interests between political actors at the EU level.

## Notes

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- 1 The following analysis of political alliances is based upon a preliminary analysis of all 386 contributions and 5,995 amendments to the Convention. At this stage, preference is given to a qualitative presentation. A quantitative presentation would in any case have difficulties in bearing out the qualitative differences between contributions.
- 2 All documents published by the Convention are referred to by their official CONV-number. They are accessible online at <<http://european-convention.eu.int>>.
- 3 Compare Steven Lukes's (1974, s. 5) critique of Hannah Arendt's concept of power.

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